

August 21, 2006

**Via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St., S.W.  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in CG Docket No. 00-167, Children's  
Television Obligations of Digital Television Broadcasters

Dear Ms. Dortch:

On August 18, 2006, on behalf of the U.S. Small Business Administration (SBA) Office of Advocacy, Charles Maresca, Director of Interagency Affairs, Eric Menge, Assistant Chief Counsel for Telecommunications, and Jamie Belcore, Mercatus Center Fellow, met with the following officials of the Federal Communications Commission (FCC): Holly Saurer, Kim Matthews, Mary Beth Murphy, all of the Media Bureau Policy Division, and Eric Malinen, FCC liaison to the SBA from the Office of Communications Business Opportunities.

Advocacy discussed the FCC's initial regulatory flexibility analysis (IRFA) for its recent proposed rulemaking on Children's Television Obligations of Digital Television Broadcasters (Proposed Rule). Advocacy made the following recommendations to help the FCC comply with the Regulatory Flexibility Act (RFA):

**Publish the Initial Regulatory Flexibility Analysis in the Federal Register**

Section 607 of the RFA instructs agencies to publish the IRFA, or a summary thereof, in the *Federal Register*. The FCC did not publish its IRFA for the Proposed Rule in the *Federal Register*, and Advocacy is concerned that small entities that could be affected by the Proposed Rule have not been afforded proper notice and

opportunity to comment on the potential burdens the proposed rulemaking imposes on small entities. The FCC can cure this defect by promptly publishing the IRFA in the *Federal Register* and leaving it open for an abbreviated comment period.

### **Discuss less burdensome alternatives to the Proposed Rule**

Section 603(c) of the Regulatory Flexibility Act requires that an agency consider any significant alternatives to a proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impacts of the proposed rule on small entities. In its IRFA, the FCC welcomed comment on modifications to the Proposed Rule that could alleviate differential impact of the regulations on small business.

During its meeting with the FCC, Advocacy noted that the following alternatives, among others, have been suggested to the FCC by various members of industry, several of which could offer significant cost savings to smaller broadcasters while potentially serving the FCC's goals:

- The Local Broadcasters Alliance (LBA) recommends that the FCC limit the applicability of the new core programming requirements to multicast streams that do not already offer educational, informational, and/or public affairs programming. Providing an exemption for small broadcasters who are already providing public affairs content, and who do not yet have the technical capabilities to insert children's programming on their multicast channels, could serve the FCC's goals and provide a reasonable amount of flexibility for small businesses.
- The National Association of Broadcasters (NAB) and others recommend that the FCC allow broadcasters to rely on certifications from programming providers that website addresses displayed during core programming meet the FCC requirements, instead of requiring stations to continuously monitor and edit programming containing website addresses. Adopting this alternative could offer significant cost savings to small broadcasters.
- The Proposed Rule would require that at least 50 percent of the core programming counted toward meeting the additional core programming requirements not consist of program episodes that have already aired within the previous seven days. The NAB recommends that the FCC amend Form 398 to allow broadcasters to certify compliance with the limitation. Again, adopting this alternative could provide significant compliance cost savings to both small and large broadcasters.

Because the FCC is required to discuss alternatives to the proposed rulemaking in its final regulatory flexibility analysis, the FCC may want to consider the

alternatives discussed above. In doing so, the FCC should include a brief statement of the factual, policy, and legal reasons for selecting the alternative adopted by the final rule, and why each one of the other significant alternatives to the rule that could affect the impact on small entities was rejected.

Please contact Eric Menge at (202) 205-6949 or [eric.menge@sba.gov](mailto:eric.menge@sba.gov) if you have any questions regarding this filing.

Sincerely,

/s/\_\_\_\_\_  
Thomas M. Sullivan  
Chief Counsel of Advocacy

/s/\_\_\_\_\_  
Jamie L. Belcore  
Mercatus Center Fellow to Advocacy

cc:

FCC Chairman Kevin J. Martin  
FCC Commissioner Deborah Taylor Tate  
FCC Commissioner Michael J. Copps  
FCC Commissioner Jonathan S. Adelstein  
FCC Commissioner Robert M. McDowell  
Steven D. Aitken, Acting Administrator, Office of Information and Regulatory  
Affairs